**MINUTES**
**of the**
**FIFTH MEETING**
**of the**
**TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE**

**November 12, 2013**
**Room 322, State Capitol**
**Santa Fe**

The fifth meeting of the Transportation Infrastructure Revenue Subcommittee (TRANS) was called to order at 9:35 a.m. by Representative Roberto "Bobby" J. Gonzales, chair, on Tuesday, November 12, 2013, in Room 322 of the State Capitol.

**Present**
Rep. Roberto "Bobby" J. Gonzales, Chair
Rep. Ernest H. Chavez
Sen. Lee S. Cotter
Rep. Anna M. Crook
Sen. Timothy M. Keller
Rep. Larry A. Larrañaga
Rep. Jane E. Powdrell-Culbert
Sen. Clemente Sanchez

**Absent**
Rep. Patricia A. Lundstrom
Sen. William H. Payne
Sen. John Arthur Smith

**Advisory Members**
Sen. Carlos R. Cisneros
Rep. Nathan "Nate" Cote
Sen. Ron Griggs
Rep. Edward C. Sandoval

Sen. Jacob R. Candelaria
Rep. Sharon Clahchischilliage
Sen. William E. Sharer

**Guest Legislator**
Rep. Tomás E. Salazar

**Staff**
Pam Stokes, Legislative Council Service (LCS)
Amy Chavez-Romero, LCS
Branden Ibarra, LCS
Mark Edwards, LCS

**Guests**
The guest list is in the meeting file.

**Handouts**
Handouts and other written testimony are in the meeting file.

**<u>Tuesday, November 12</u>**

**Preserving the Amtrak Southwest Chief Route**

Bill Sauble, vice chair, Colfax County Commission, and co-chair of the Southwest Chief Coalition, led a panel of presenters regarding potential loss of the Southwest Chief passenger rail service. Mr. Sauble started the discussion by informing the subcommittee that the contract between the Burlington Northern Santa Fe Railway (BNSF) and Amtrak that provides for the Southwest Chief will expire at the end of 2015. He stated that legislation would be needed to keep the Southwest Chief in operation. Acknowledging actions that the legislature has already taken in support of rail service in New Mexico, Mr. Sauble expressed his thanks for the passage of measures in previous sessions. Mr. Sauble then introduced a number of officials from communities served by the rail line and turned the presentation over to Ray Lang, the chief of government affairs for Amtrak.

Mr. Lang began with a brief overview of what Amtrak is and how it operates. He noted that Amtrak is a federally owned corporation created on May 1, 1971 by an act of Congress. Mr. Lang stated that Amtrak's purpose is to provide passenger service and relieve freight rail companies from what had been an unfunded obligation to provide that service. He explained that instead of building its own railroad track, Amtrak has a right of incremental access to any rail line in the U.S. He clarified that this right means that the freight lines that own the track can bill Amtrak for the incremental costs associated with having passenger lines run on their track, but they are not allowed to profit off of Amtrak service. Mr. Lang stated that Amtrak currently has agreements with six long-distance freight carriers and that there are only 15 long-distance Amtrak trains like the Southwest Chief left in the United States.

With respect to the Southwest Chief, Mr. Lang explained that it is a daily train that runs from Chicago to Los Angeles. Amtrak's agreement with BNSF ends on January 1, 2016. Amtrak has been informed by BNSF that BNSF will cease to maintain most of the line at a standard that allows for trains to move at 79 miles per hour. BNSF intends to discontinue use of some of the line and maintain most of the rest at a 30 miles-per-hour standard. Thirty miles per hour is slow for passenger trains and much too slow for the distances involved. He then specified that BNSF plans to maintain the track between La Junta and Trinidad, Colorado. BNSF does not use the track between Trinidad and Albuquerque, will not maintain it and would like to sell it. Instead, BNSF uses a parallel line, the Transcontinental, also known as the Transcon. He explained that the Transcon runs from Wichita to Amarillo and then south. Amtrak could use that route, but it would then have to run a different line to Albuquerque. He stated that Amtrak would prefer to maintain service to the nine cities that would be bypassed by the new route. He identified those cities as: Hutchinson, Dodge City and Garden City in Kansas; Lamar, La Junta and Trinidad in Colorado; and Raton, Las Vegas and Lamy in New Mexico.

Providing more detail to the issue, Mr. Lang described the track in Kansas as "244 miles of rail in very poor shape. It needs new track.". He noted that new track is expected to last 40 years. In Colorado, he explained that BNSF does run trains at 79 miles per hour over the track between Trinidad and La Junta. However, he asserted that it would take public funding to maintain the rest of the track in Colorado above a 30 miles-per-hour standard. For New Mexico, Mr. Lang noted that the rail line south of Lamy is owned by the state. Speaking only about the cost to maintain the track from the Colorado border to Lamy, he cited an annual cost of $6.2 million.

Mr. Lang then estimated the cost to keep the entire rail line from Hutchinson, Kansas, to Albuquerque, New Mexico, at close to $200 million, including maintenance and construction over the next 10 years. This would establish the rail line as useable for 40 years, and asked the subcommittee to think of it as providing a generation's worth of rail service. Then he referred the subcommittee to page nine of the Amtrak handout for a breakdown of the cost by state.

Mr. Lang acknowledged that Amtrak has known for a couple of years that the Southwest Chief service is in jeopardy, and it has been informing the impacted communities. He then presented a proposal developed by Amtrak to resolve the issue. The proposal is to split the cost into equal shares among the three states, New Mexico, Colorado and Kansas, and the two rail service providers, Amtrak and BNSF. Each share would be $40 million broken down to $4 million per year over 10 years. He stated that having a relief rail line for the Transcon might be worth $4 million a year to BNSF. He then raised the question of whether it would be worth $4 million a year to each of the states to keep the passenger service. He pointed out that Kansas had applied for a $29 million grant from the U.S. Department of Transportation's Transportation Investment Generating Economic Recovery (TIGER) program. He then referred to that application an example that one of the affected states is thinking about the issue on a similar scale. He stated that had the TIGER grant been approved, it would have kept up the Kansas portion of the rail line.

Mr. Lang closed by asserting that if the funding issue is not resolved, the rail line will be abandoned; and he expressed the opinion that it should be preserved for future freight opportunities.

Mr. Lang was then asked at what point would he believe he had a commitment from each of the parties to the proposal. He answered that only Amtrak had committed to the funding proposal so far. He said that initial reaction from the respective state departments of transportation was that Amtrak should seek federal funding, but that there had not been much response from the federal government.

Mr. Lang remarked that, as the situation stands, Amtrak would have to maintain the track on its own starting in 2016, and that it will not be able to do that for long. As an alternative, he indicated that Amtrak is looking to reroute its service, which would entail a substantial cost as well. He noted that if Amtrak rerouted the service to the Transcon, it would have to spend funds for additional track. He explained that the passenger trains would overtake the freight trains using that line. Therefore, he said the passenger service would need new side lines to pass around the slower moving freight service.

The next presenter was Mark Anderson, director of programs for the Philmont Scout Ranch. Mr. Anderson announced that Philmont is celebrating its seventy-fifth anniversary this year and expects to host its one millionth backpacker or camper by next July. He said that the ranch employs 1,000 people annually. Mr. Anderson estimated that annually approximately 4,400 campers rely on the rail service to reach Raton on their way to the ranch. He explained that that figure had practical implications for Philmont, given the approaching deadline to secure passenger rail service. He said that Philmont is currently completing its reservations for the 2015 camping season. Given the lead time for reservations, he pointed out that many people making their reservations next fall will also need to look for alternate transportation if the Southwest Chief service is not secured.

The last presenter was Harold Garcia, public works supervisor for San Miguel County. Mr. Garcia emphasized the potential benefits of continued freight hauling on the rail line and cited two examples for San Miguel County. In the first example, he said the county has established a 53-acre business park that can be served by two different rail spurs. Mr. Garcia indicated that the access to freight rail service is an important marketing tool to attract future businesses to San Miguel County. In the second example, he remarked on how freight rail may lower the cost of county services. He pointed out that the county is currently using double-haul trucks to transport solid waste but is considering the use of freight rail to reduce costs.

Mr. Sauble then gave the following summary of what the Southwest Chief Coalition is seeking from the state:

- a focused study, possibly with a consultant on contract, on the funding and legislation that would be required for New Mexico to continue the Southwest Chief service;

- collaboration between the state government and New Mexico's congressional delegation to maintain the track. He noted that the entire congressional delegation wrote in support of the TIGER grant for Kansas;

- a $4 million a year commitment along the lines of the Amtrak proposal to win agreement from the other states; and

- a dedicated permanent fund to maintain the rail line, with the possibility for bonding capacity.

There followed a series of questions and remarks by TRANS members.

Mr. Lang was asked what would happen if New Mexico commits to the Amtrak proposal but other states do not. He responded that a 60% response would not work and that the proposal would only be a viable solution if all of the parties work together as a partnership. Mr. Lang expressed his view that momentum is building for a partnership but that each state appears to be waiting for one of the others to take the lead.

A subcommittee member asked what the presenters thought was needed from the upcoming legislative session. Mr. Sauble replied that they are seeking a set of incremental steps, the first being a study using a third-party consultant to give detailed answers as to the costs, available funding mechanisms and identifying any required legislation.

Another subcommittee member noted that the memorials the legislature had passed in support of maintaining the Southwest Chief had been sent to the governors, legislatures and congressional delegations of the impacted states and asked if the presenters had seen any response. Mr. Lang replied that Amtrak had met with each of the state transportation departments about the issue, eliciting a joint response letter suggesting that Amtrak bring the issue to the respective state congressional delegations. He remarked that the response from the congressional delegations was similar, except that the suggestion was that Amtrak seek state assistance for the Southwest Chief.

In a further response, Mr. Sauble pointed out that the Southwest Chief Coalition had been collecting resolutions of support from various communities serviced by the rail service.

A follow-up question by a subcommittee member asked whether any local governments had committed funding toward retaining the Southwest Chief. Mr. Sauble and Mr. Garcia, speaking about the actions of their respective local governments, stated that both Colfax and San Miguel counties have included the Southwest Chief in their infrastructure capital improvement plans. Mr. Sauble also highlighted that Raton has been using city funds to improve its rail station.

The subcommittee then engaged in a short discussion on who should conduct the cost and legislative needs study. The discussion concluded with a statement that either the Department of Transportation (DOT) or the Legislative Finance Committee would be better situated to conduct a study.

Subcommittee members then asked Mr. Lang a few questions about the economics of passenger rail service.

Mr. Lang was asked whether passenger rail use is in decline. Mr. Lang stated that passenger ridership is actually growing, that Amtrak had set a new record for ridership in 10 of the last 11 years and that year it had reached an all-time high of 39 million passengers. In terms of economic viability, Mr. Lang noted that passenger fees used to cover only 50% of Amtrak's costs but that in recent years that has grown to 89%.

A second question was whether a rail line can be revived at a later time once it has been discontinued. Mr. Lang replied that it is a question of cost; in his opinion, once a line is abandoned, it is lost forever. He pointed out that the essential element for a rail line is a narrow right of way for transportation. He asserted that once that right of way falls into private hands, it is nearly impossible to retrieve. As an analogy, Mr. Lang pointed out that a particularly difficult problem in urban areas is to find corridors for commuter mass transit lines. He noted that it can cost millions of dollars per mile to start a line from scratch, whereas those same funds can maintain 20 to 30 miles of existing track.

A subcommittee member asked what other sources of funding were available to refurbish the track for the Southwest Chief. Mr. Lang replied that efforts had been made to acquire federal funding, but they had been unsuccessful so far. He informed the subcommittee the federal transportation bill had no new funding for long-distance trains. However, he pointed out that the 2012 U.S. Senate version of the bill would have given the states the flexibility to use federal rail funding for long-distance trains. However, despite the benefit to rural states, the provision did not survive in conference. He indicated that the states need to be more vocal in their support of the measure and of additional federal rail funding.

He then turned the subcommittee's attention to why the Kansas application for a TIGER grant likely failed. He explained that under the terms of a TIGER grant, once any money is spent on a project, the applicant is required to maintain the service for 20 years. He indicated that the review board for the Federal Railroad Administration (FRA) recognized that Amtrak's willingness to commit to a 20% share of the obligation was "a big deal". However, the FRA turned down the application because it did not see a corresponding commitment from all three of the states serviced by the line. He speculated that an application from all three states might receive a favorable review.

A member of the subcommittee then asked if there were any analyses on the Southwest Chief's economic impact in New Mexico. Mr. Sauble reported that a commissioned economic impact study had been issued the night before. He asked that Ford Robbins, the New Mexico section leader for the Southwest Chief Coalition, speak about the findings of the study which included:

- visitor spending from passengers arriving via the Southwest Chief creates an estimated $29.3 million annually in economic output in northern New Mexico communities; $17.4 million of that is direct spending; and

- the visitor and tourist traffic generated through the Southwest Chief employs 368 people in northern New Mexico communities.

Mr. Robbins stated that he is worried not only about losing the spending and employment cited in the Impact study, but also about potential loss of future economic growth.

At this point, Mr. Lang resumed clarifications regarding his presentation and Amtrak's operating needs for the Southwest Chief. He explained that the individual cost estimates for each state were based on lengths of track and on different needs. Starting from Hutchinson, Kansas, he stated that:

- the track in Kansas needs to be upgraded from a freight standard allowing 30 miles-per-hour trains to a passenger standard allowing 79 miles-per-hour trains;

- in Colorado, BNSF will continue to maintain a portion of the Southwest Chief's track line that it uses for other purposes, but the rest will need to be upgraded; and

- the track in New Mexico from the Colorado border to Albuquerque will need to be completely replaced and maintained.

He said that the Southwest Chief track west of Albuquerque will not be affected by BNSF's decision and that BNSF will continue to maintain the line going west from Albuquerque at the 79 miles per hour standard.

There followed a discussion on when the state needs to commit to funding to avoid losing the Southwest Chief rail service. Commenting on the idea that New Mexico would need to act in concert with other states to succeed, a subcommittee member noted that a proposal for capital outlay contingent on other actors would require careful consideration.

The subcommittee discussion then turned to New Mexico's previous effort to purchase the track and its effects on an effort to keep the Southwest Chief service. According to Secretary-Designate of Transportation Tom Church, the state had placed $5 million in an escrow account toward eventual purchase of the track. However, after receiving estimates of the maintenance cost, a decision was made to forgo purchase and the payment was returned. The secretary said that the DOT had received three contract bids for maintenance in 2009, ranging from $5.6 million to $6.9 million per year for routine maintenance. Expanding on why maintenance of the track would be costly, Secretary-Designate Church noted that it was 182 miles of rail line with some very antiquated components.

The subcommittee then discussed whether the anti-donation clause of the Constitution of New Mexico would affect a state effort to rebuild or maintain the track without purchasing it. One subcommittee member noted that one of the exceptions in the anti-donation clause was for creating new employment and remarked that looking at the exception clauses would take some careful analysis. Mr. Lang stated that an explicit provision concerning railroads was common in state constitutions and was a manifestation of the "robber baron days" of land speculation during the initial growth of the rail lines in the United States. A subcommittee member remarked that purchasing the track might be an issue to reexamine and suggested that it might be done using New Mexico Finance Authority (NMFA) bonding.

Speaking to the possibility of using the Transcon through Amarillo and Clovis, Mr. Lang stated that Amtrak does not want to create a competition between currently served and potentially served communities. Therefore, Amtrak has not spoken to them about an alternative service route. He did clarify that the Southwest Chief is a modernized version of the former Super Chief service from Chicago to Los Angeles and does not follow the same route served by the discontinued San Francisco Chief service that used to run through Clovis. A subcommittee member noted that the rail line through Clovis is already heavily used by nearly 100 freight trains.

Returning to the cost to New Mexico to keep the Southwest Chief service, Mr. Lang referred to the figures on page 9 of his handouts. His estimates under the Amtrak proposal are that costs in New Mexico would be $3.9 million per year for 10 years in an initial replacement and refurbishment of the line and $6.7 million per year in maintenance.

Referring to the economic impact study, a subcommittee member noted that the long-term cost/benefit comparison showed $6.7 million in annual state costs in exchange for nearly $30 million in economic activity. The member also pointed out that direct and indirect state tax revenues generated by the Southwest Chief were estimated at $2.2 million. The subcommittee member then remarked that the return on investment of the Amtrak proposal seemed analogous to the return on investment arguments that had been made for the Union Pacific tax breaks for the southern rail line and the state's commitment to the spaceport. The member then noted that if the investment arguments stand up to review, sources of funding might include the NMFA's substantial bonding capacity and the small surplus in this year's state budget.

At this point, the subcommittee entered into a general discussion identifying constitutional and funding issues that would need to be addressed, specifically:

- whether the anti-donation clause would need to be amended to allow the state to participate in the Amtrak proposal;

- whether the anti-donation clause would prohibit state expenditures for maintenance as well as construction, or if a public/private partnership (PPP) could be designed to avoid the constitutional issue;

- whether local municipalities and counties would contribute to keep the service; and

- whether state participation in the Amtrak proposal would create a negative precedent whereby a freight carrier could threaten to abandon a passenger line in order to get the state to upgrade the track.

Mr. Sauble stated that the Southwest Chief Coalition's analysis was that an argument could be made that the state's participation would fall under the job creation and economic development exception. A subcommittee member followed up on this idea by pointing out that the Cumbres and Toltec Scenic Railroad had received state funds as an economic development investment.

At this point, the chair asked if anyone in attendance would like to make a brief public comment. Four people responded.

Chris Candelario, mayor pro tem for the City of Raton, commented that two of his city's major businesses had closed in recent years, the mine and the racetrack. He emphasized that Raton's infrastructure capital improvement plan includes the rail station because the city needs it.

John Olivas, chair of the Mora County Commission, said his county supports the Amtrak proposal and highlighted the need to keep BNSF involved as a partner in the rail line as it is Mora County's single largest tax contributor. He stated that Mora County stands to lose approximately $2 million in tax revenue over 10 years from that source alone if it loses the rail line.

Landon Newton, Colfax County commissioner, said his county would also lose a big part of its tax revenue with the loss of the rail line. He further remarked that the railroad has historic importance to the county, having been a key part of its economy under the old Atchison, Topeka, and Santa Fe Railway. He also noted that the Southwest Chief provided a first glimpse of New Mexico for many people.

David Coss, mayor of Santa Fe, informed the subcommittee that the Santa Fe City Council had passed a resolution in support of keeping the Southwest Chief service. Further, he stated, the New Mexico Municipal League had also showed support as part of its official policy.

In the interlude between the first and second panels, the subcommittee reviewed the minutes from its last meeting. With the provision that Representative Crook should be listed as a full member of the subcommittee and not an advisory member, the minutes of October 8, 2013 were approved without objection.

**New Mexico Passenger Transportation Association**

Jon Bulthius, president, New Mexico Passenger Transportation Association (NMPTA), and Stan Cooper, an NMPTA board member representing the American Association of Retired Persons (AARP), gave the subcommittee a brief overview of transit services and challenges in New Mexico.

Mr. Bulthius started by explaining that the NMPTA is an association of transit providers across New Mexico. He stated that the NMPTA has over 80 members who provide a range of services. He used the Taos Chile Line, the Rail Runner and the Gallup Express as examples.

Mr. Bulthius identified three population groups, the elderly, veterans and youth, as dependent on transit services. He pointed out that schoolchildren in Santa Fe often use the Santa Fe Trails system for after-school transportation.

Highlighting a challenge for New Mexico, Mr. Bulthius spoke to what he termed a "tsunami in growth" in the senior citizen population. He stated that senior citizens currently constitute 13.1% of the state's population and that this percentage is projected to double by 2030.

Mr. Cooper remarked that an ongoing debate within his area of transportation policy is about when senior citizens should give up their car keys. He noted that that question is always coupled with: once they give them up, how do they get around?

Mr. Bulthius then explained that the NMPTA's purpose in appearing in front of the subcommittee is to highlight a need for partnership between local communities and the state to provide transit. He cited a growing demand for transit services that is happening at the same time that federal transit funding is shrinking, together creating the need for a state-focused partnership.

Mr. Bulthius pointed out that an additional benefit of investing in transit systems for the state would be to leverage the growth in alternative fuels. He noted that transit systems are good customers for natural gas and other alternative fuels for vehicles. Mr. Bulthius ended his prepared remarks by offering the NMPTA as a potential partner to the legislature as it grapples with upcoming transportation issues.

In response to follow-up questions by subcommittee members, Mr. Bulthius clarified that the NMPTA is not expecting to pursue specific legislation in the 2014 legislative session. However, the NMPTA would likely seek the creation of a transit fund like the State Road Fund in 2015. He also said that, in reference to the previous presentation on the Southwest Chief, the NMPTA board has not taken a position regarding alternative routes.

Mr. Cooper was asked if there were any statistics regarding the percentage of senior citizens that use transit. He replied that an old study by the University of New Mexico found that most seniors used their cars to get around. He indicated that part of that study was in survey form and that many respondents expected to quit driving at the age of 85 and then rely on family help. However, he stated that such expectation was unrealistic. He pointed out that the AARP had published many guidelines on how people could approach a conversation with elderly parents about giving up their cars. He noted that those conversations were much more difficult without available transit services as an alternative.

In closing, Mr. Bulthius answered questions by subcommittee members about the NMPTA's presence in less populous areas of the state. Mr. Bulthius allowed that parts of the state are not currently covered by NMPTA members. He also noted that some areas, such as Torrance County, had lost transit services, which is a problem spreading across the state.

**Streamlining Fueling for the Growing Natural Gas Vehicle Market**

Sherrie Merrow, co-chair of the New Mexico Natural Gas Vehicle Coalition (NMNGVC), Colin Messer, clean energy program manager for the Energy, Minerals and Natural Resources Department (EMNRD) and co-chair of the NMNGVC, and Blake Littauer, Transit Business Development Division of Clean Energy Fuels, gave a presentation on changing how fuel taxes are collected in New Mexico. Copies of their handouts are posted online.

Ms. Merrow stated that her purpose in appearing before the subcommittee was that the NMNGVC would like alternative vehicle fuels treated and taxed at the pump in a manner similar to other fuels. She indicated that the current taxing method is an impediment to the increased use of natural gas fuel despite its cost savings. Ms. Merrow noted that the price of natural gas is not connected to the price of oil and that its cost is lower. She estimated that if the entire transportation sector were converted to natural gas, its current use would double.

Ms. Merrow then gave the subcommittee a brief overview of the natural gas vehicle fuel industry. She stated that large, national corporations are now using, or converting their fleets to, natural gas vehicles. Ms. Merrow remarked that, although the increase has been slow, there is a growing number of natural gas stations across the country and natural gas vehicles are becoming a larger part of the national passenger fleet.

Highlighting New Mexico's natural gas vehicle fuel industry, Ms. Merrow stated that there are now 10 compressed natural gas (CNG) stations in the state, four of which are public stations. She also noted that New Mexico is the leader in promoting a multistate memorandum of understanding (MOU) under which signatory states commit to using natural gas vehicles for state vehicles whenever it is a feasible alternative. She stated that 16 states, including New Mexico, are now signatories to the MOU.

Ms. Merrow explained that there are two natural gas vehicle fuel products, CNG, which is used for passenger and moderately heavy commercial vehicles, and liquefied natural gas (LNG). She clarified that LNG is essentially frozen and takes up less space. She explained that the smaller fuel tanks required by LNG allow it to be used by heavy commercial vehicles such as 18-wheeler trucks. Ms. Merrrow also asserted that natural gas fuels are safer than traditional petroleum fuels, being more difficult to set on fire or cause to explode.

Ms. Merrow then discussed the way that alternative fuels are taxed in New Mexico. She stated that New Mexico currently uses a decal or pay-at-the-pump system that assumes a number of miles traveled. She also noted that sometimes the pumps are not manned. Ms. Merrow explained that this system translates into a wide range of tax collection; the tax either gets charged or not, and sometimes the tax is double what the state had intended.

Ms. Merrow stated that the industry would like to have a cents-per-fuel-amount tax system that would be similar to that used for gasoline and diesel so that a customer can see the costs. She explained that the industry's intention was twofold:

1) to have the pay-at-the-pump experience be the same for natural gas users as it is for gasoline users; and

2) to base the tax on the equivalent fuel efficiency, or miles per gallon, purchased by the customer.

Referring to the draft of proposed legislation provided in the handouts, Ms. Merrow noted that on page 3, in Section 2(E), the equivalencies were defined as 5.66 pounds or 126.67 cubic feet of CNG as equivalent to one gallon of gasoline and as 6.06 pounds of LNG as equivalent to one gallon of diesel. She noted that the equivalency for CNG is currently reflected in the state's decal system but that the LNG equivalency is new. She indicated, however, that the LNG equivalency figure in the proposed legislation is in line with the federal fuel tax methodology in which LNG is taxed at 1.7 times the tax on diesel.

Commenting on the proposed legislation from his position at the EMNRD, Mr. Messer stated that the industry is expected to grow. Given that expectation, he said that New Mexico needs to be able to capture the fuel tax that will become available from natural gas fuel stations.

Ms. Merrow then clarified for the subcommittee that if the current decal program worked as intended, the industry proposal would not change the tax revenues from passenger vehicles. However, she stated that, for heavy weight classes, New Mexico is losing revenue. She cited as an example that there is no decal program for trucks weighing over 54,000 pounds.

Subcommittee members raised concerns about how fuel taxes are divided. One concern is that New Mexico receives 100% of decal receipts but splits per volume fuel taxes. Another concern is that LNG pays a higher federal tax, 1.7 times the amount for diesel at the federal level, and whether that should also be reflected in a state tax.

Ms. Merrow responded by stating that the natural gas fuel industry understood that the state would tax fuels at whatever rate it needed to. She said that the industry is seeking rates to be set so that the state would get the same revenue across vehicle fuels for the same amount of miles traveled. She noted that Texas and Oklahoma have already enacted statutes along these lines.

Mr. Littauer commented on this point. He said that his company is seeking transparency at the point of retail fuel sales. He added that the projections are for companies to save up to $1.00 per gallon equivalency by converting their fleets. He indicated that potential customers for vehicle natural gas want a simple way to make cost comparisons. As an example, he informed the subcommittee that UPS is waiting on a state-by-state basis until this issue is resolved before converting its fleet in any given state. He also noted that UPS is actively seeking federal legislation on this issue as well.

Mr. Littauer further noted that Clean Energy Fuels has focused on identifying customers who would convert "anchor fleets" to natural gas, as opposed to seeking established gasoline and diesel retailers to convert their stations. He stated that a new natural gas vehicle station would cost approximately $1 million. He cited the Santa Fe Trails bus fleet as an example of a conversion customer that would help make a new station viable.

Responding to a subcommittee member's question about other potential benefits of natural gas fuel, Ms. Merrow acknowledged that the industry is still developing engine maintenance comparisons. However, she noted that natural gas fuels are cleaner than traditional petroleum fuels, so fuel filters last longer.

Following a subcommittee member's question about how CNG is being taxed in other states, Ms. Merrow cited Florida and Texas as two different approaches. She stated that Florida is currently not taxing CNG in order to promote the industry. Texas, on the other hand, is taxing CNG at 15 cents-per-gallon equivalency. She stated that most states are following the Texas model.

A subcommittee member commented that the current decal system is intended to capture the road use from cross-border shipping and that under a per-gallon-equivalency tax, users would fill up in the state with the lowest tax. Ms. Merrow said that was being looked at under the International Fuel Tax Agreement (IFTA) but that no new IFTA rules had been promulgated yet.

In a similar vein, a subcommittee member noted that railroads have greater options for choosing where to site their fuel stations and wondered how states are treating them with regard to natural gas fuel taxes. Ms. Merrow stated that five railroad companies are engaged in pilot programs for natural gas fuels. She also noted that off-road vehicle taxes are usually based on a per-mile-traveled standard rather than a per-gallon-equivalency standard.

The subcommittee then turned to a discussion regarding the prospects for the proposed legislation. Ms. Merrow stated that she did not know why there might be opposition to the bill, but noted that some states are very satisfied with their own decal system. She reemphasized the point that New Mexico's fuel tax revenues should stay the same or slightly increase under the proposal. She further acknowledged that the legislative proposal is primarily a proactive effort to avoid future problems. She added that the natural gas vehicle industry has determined that a uniform standard of taxing fuels will help bring their product into the market. She said that similar legislation was introduced in 13 states last year and was passed in 11 of them.

A subcommittee member then commented that the definitions in the draft legislation might need to be expanded before introduction. The point was that the alternative definition for the CNG equivalency cites 126.67 cubic feet of compressed gas but not the temperature or pressure specifications.

A final comment by a subcommittee member was that the NMPTA should talk with the Office of the Governor about the legislation as well.

Senator Keller then moved for endorsement of the proposed legislation. Senator Sanchez seconded the motion, and it passed without objection.

**Legislative Proposal — Public/Private Partnerships**

Senator Keller reported to the subcommittee on draft legislation authorizing PPPs that would be a follow-up effort to the bill that he and Representative Larrañaga cosponsored last session.

Senator Keller highlighted various components of the proposed legislation and differences between it and previous legislation but stated that the draft bill is not yet ready for endorsement by the subcommittee. He remarked that some of the provisions are still being worked on. He also noted that some constituent groups would prefer much narrower PPP legislation and might present challenges to a larger bill.

Senator Keller then responded to a subcommittee member's question about performance payments, stating that, depending on the individual PPP contract, performance payments could be made either during the process of fulfilling the contract or at the end. Representative Larrañaga, cosponsor for the prospective bill, noted that an operational PPP, such as track maintenance for a commuter train, might be based on different factors than a typical construction project.

Representative Larrañaga further remarked that the PPP concept is not new. He stated that 35 states currently have some form of PPP authorizing statute and that many municipalities in New Mexico, including Albuquerque and Silver City, have PPP ordinances.

A subcommittee member asked whether the cosponsors were ready to convey a message to the governor, noting that the legislation has a broad reach. Following that comment, a subcommittee member noted that PPPs are an instrument for spending but not in themselves an appropriation of funding. The member asked that the sponsors, if they can clear up the unresolved issues in the bill, bring the bill to the attention of the interim Revenue Stabilization and Tax Policy Committee.

Senator Keller noted that a key unresolved issue is who gets to approve a PPP and that this particular draft gave that authorization to the NMFA and the Department of Finance and Administration.

After the chair reminded the subcommittee that a combined meeting with the Jobs Council was scheduled for December 2, the TRANS adjourned without objection.